

## **REMARKS**

Claims 1 and 4-73 are pending in this application. Claims 1 and 4-73 are canceled herein without prejudice. New claims 74 and 75 are added herein. Support for these new claims is found throughout the specification and in particular, in the Sequence Listing and at least, for example, on page 4, line 12, of the specification. The title is amended herein to more particularly describe the claimed invention, as requested by the Examiner. It is believed that no new matter is added by these new claims and amendment and their entry is respectfully requested. In light of these amendments and the following remarks, applicants respectfully request entry of this Amendment and allowance of the pending claims to issue.

### **I. Objections to claims**

Claims 8 and 13 are objected to on the basis that the second recitation of "microparticle" in claim 8 is misspelled and the term "comprises" in line 4 of claim 13 should either be replaced with —comprise— or an article should be inserted before the first recitation of "tobacco" in line 3.

Claims 8 and 13 are canceled herein without prejudice, thereby mooting this objection and applicants respectfully request its withdrawal.

### **II. Rejections under 35 U.S.C. § 112, first paragraph**

#### **A. Enablement**

Claims 1 and 4-32 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention and as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, to make and/or use the invention commensurate with the scope of the claims.

Claims 1 and 4-32 are canceled herein without prejudice, thereby mooting this rejection and applicants respectfully request its withdrawal.

**B. Written Description**

Claims 1 and 4-32 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors at the time the application was filed had possession of the claimed invention.

Claims 1 and 4-32 are canceled herein without prejudice, thereby mooting this rejection and applicants respectfully request its withdrawal.

**III. Rejection under 35 U.S.C. § 112, second paragraph**

Claims 5-9 and 14-32 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 5-9 and 14-32 are canceled herein without prejudice, thereby mooting this rejection and applicants respectfully request its withdrawal.

**IV. Rejection under 35 U.S.C. § 102(b)**

Claims 1 and 4-10 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Conkling et al., WO 97/05261. -

Claims 1 and 4-10 are canceled herein without prejudice, thereby mooting this rejection and applicants respectfully request its withdrawal.

**V. Double Patenting rejection**

Claims 1 and 4-10 stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-13 and 16-22 of U.S. Patent No. 5,837,876.

Claims 1 and 4-10 are canceled herein without prejudice, thereby mooting this rejection and applicants respectfully request its withdrawal.

**VI. New claims 74 and 75**

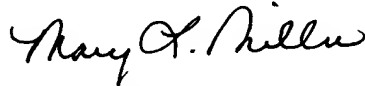
New claims 74 and 75 are presented herein and recite an isolated nucleic acid consisting of the nucleotide sequence of SEQ ID NO: 1, as well as a dependent embodiment wherein said nucleic acid is DNA. Support for these new claims is found throughout the specification, as noted above and no new matter is added by these new claims. Applicants note that these claims recite the same subject matter that was presented in claims 77 and 78 in the Amendment filed June 11, 2004 and which were identified to be allowable by the Examiner in the August 5, 2004 Advisory Action. Applicants are presenting this subject matter again, as new claims 74 and 75 herein and respectfully request entry and consideration thereof. Applicants believe that these new claims are free of the rejections cited herein and contain allowable subject matter, consistent with the Examiner's indication in the Advisory Action and therefore request the issuance of a Notice of Allowance for these claims.

Applicants believe that all of the issues raised in the Office Action are addressed herein. The Examiner is invited and encouraged to contact the undersigned directly if such contact will expedite the prosecution of the pending claims to issue.

Attorney Docket No. 5051.471  
Application Serial No.: 09/941,042  
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A check in the amount of \$1320.00 (\$340.00 Notice of Appeal fee and \$980.00 fee for three month extension of time) is enclosed. This amount is believed to be correct. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account 50-0220.

Respectfully Submitted,



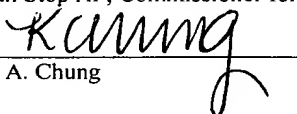
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Katie A. Chung